



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2019-0117; Notice 2]

Notice of Denial of Petition for Decision that

Nonconforming Model Year 2017-2019 Mercedes-Benz Maybach S600 Pullman

Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition for determination of import eligibility.

SUMMARY: G&K Automotive Conversion, Inc. (G&K or Petitioner) has petitioned NHTSA for a decision that model year 2017-2019 Mercedes-Benz Maybach S600 Pullman vehicles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States. In its petition, G&K claims that these vehicles are eligible for import because they are substantially similar to and of the same model year as vehicles originally manufactured for import into and certified for sale in the United States, and they are capable of being readily altered to conform to all applicable FMVSS. This document announces the denial of G&K's petition.

FOR FURTHER INFORMATION CONTACT: Robert Mazurowski, Office of Vehicle Safety Compliance, NHTSA (202-366-1012).

SUPPLEMENTARY INFORMATION:

I. Background: A motor vehicle that was not originally manufactured to conform to all applicable FMVSS may be eligible for import into the United States if NHTSA determines that the motor vehicle is 1) substantially similar to a motor vehicle originally manufactured for importation into and certified for sale in the United States, 2) of the same model year as the model of the motor vehicle to which it is being compared, and 3) capable of being readily

altered to conform to all applicable FMVSS. See 49 U.S.C. 30141(a)(1)(A).¹ If NHTSA determines that a nonconforming vehicle is import eligible, any such nonconforming vehicle imported into the United States must be modified into conformance and certified as conforming by a registered importer before it is sold or otherwise released from the custody of the registered importer. 49 U.S.C. 30146(a)(1); 49 CFR 592.6.²

Petitions for import eligibility decisions may be submitted by either manufacturers or registered importers and must comply with the requirements set forth in 49 CFR 593.6. A petition based on the existence of a substantially similar conforming vehicle manufactured for import and certified for sale in the United States must include, among other things, “[d]ata, views and arguments demonstrating that the vehicle [which is the subject of the petition] is substantially similar to the vehicle identified by the petitioner” as a comparison vehicle. *Id.* § 593(a)(4). The petition also must include, with respect to each of the FMVSS applicable to the comparison vehicle, “data, views, and arguments demonstrating that the vehicle [which is the subject of the petition] either was originally manufactured to conform to such standard, or is capable of being readily modified to conform to such standard.” *Id.* § 597.6(a)(4).

As specified in 49 CFR 593.7, NHTSA publishes notice of each petition that it receives in the *Federal Register* and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides whether the vehicle is eligible for importation based on the petition, its review of any comments received, and the agency’s own analysis. NHTSA will grant a petition for import eligibility if it “determines that the petition clearly demonstrates that the vehicle model is eligible for importation” and will deny the petition if it “determines that the petition does not clearly demonstrate that the vehicle

¹ This provision was codified at 15 U.S.C. 1397(c)(3)(A) prior to the 1994 recodification of the transportation laws.

² A registered importer is an importer that has registered with NHTSA under 49 CFR part 592 and is therefore authorized to modify and then certify imported vehicles as compliant with all applicable FMVSS.

model is eligible for importation.” 49 CFR 593.7(e)-(f). NHTSA then publishes its decision and the reasons for it in the *Federal Register*. *Id.*

II. Summary of Petition: G&K, a registered importer, located in Santa Ana, California has petitioned NHTSA to decide whether nonconforming model year 2017-2019 Mercedes-Benz Maybach S600 Pullman passenger cars (the Subject Vehicles) are eligible for importation into the United States. In its petition, G&K contends the Subject Vehicles are substantially similar to model year 2017-2019 Mercedes-Benz Maybach S600 passenger cars (the Comparison Vehicles) sold in the United States and certified by their manufacturer as conforming to all applicable FMVSS. G&K’s petition states that the Subject Vehicles are “manufactured by Mercedes Benz in Germany for the European market” and that “Mercedes Benz has also used its licensed manufacturer Brabus for additional features that are added to the vehicles.”³ The petition does not identify these additional features, but states that the gross vehicle weight rating (GVWR) of the Subject Vehicles is 7,946 pounds and that the GVWR of the Comparison Vehicles is 6,206 pounds.

Although G&K’s petition states that it is requesting an import eligibility decision for model years 2017, 2018, and 2019 of the Subject Vehicles, G&K’s petition is based solely on its inspection of a model year 2018 Subject Vehicle. The petition makes no reference to any inspection or analysis involving a model year 2017 or model year 2019 Subject Vehicle and no representation regarding the similarity of or differences between model year 2017, 2018, and 2019 Subject Vehicles. The petition also fails to state whether the comparison performed by G&K involved a model year 2017, 2018, or 2019 Comparison Vehicle.

G&K’s petition nonetheless states that its analysis of the Subject Vehicles and the Comparison Vehicles compels the conclusion that the vehicles are substantially similar.

³ The agency interprets petitioner’s references to “Mercedes Benz” as a reference to Mercedes-Benz AG, the German motor vehicle manufacturer with headquarters in Stuttgart, Germany, and its reference to “Brabus” as a reference to BRABUS GmbH, an automotive aftermarket company in Bottrop, Germany.

Specifically, Petitioner states that the Subject Vehicles, as originally manufactured, conform to: FMVSS Nos. 102, Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect; 103, Windshield Defrosting and Defogging Systems; 104, Windshield Wiping and Washing Systems; 106, Brake Hoses; 113, Hood Latch System; 114, Theft Protection and Rollaway Prevention; 116, Motor Vehicle Brake Fluids; 118, Power-Operated Window, Partition, and Roof Panel System; 124, Accelerator Control Systems; 126, Electronic Stability Control Systems; 135, Light Vehicle Brake Systems; 138, Tire Pressure Monitoring Systems; 139, New Pneumatic Radial Tires; 201, Occupant Protection in Interior Impact; 202, Head Restraints; Applicable at the Manufacturers Option until September 1, 2009; 204, Steering Control Rearward Displacement; 205, Glazing Materials; 206, Door Locks and Door Retention Components; 207, Seating Systems; 208, Occupant Crash Protection; 209, Seat Belt Assemblies; 210, Seat Belt Assembly Anchorages; 212, Windshield Mounting; 214, Side Impact Protection; 216, Roof Crush Resistance; Applicable unless a Vehicle is Certified to §571.216a; 219, Windshield Zone Intrusion; 225, Child Restraint Anchorage Systems; and 302, Flammability of Interior Materials. With respect to many of these standards, G&K states that the Subject Vehicles utilize the same components as the Comparison Vehicles and claims, without any supporting analysis, that the Subject Vehicles are therefore compliant. With respect to FMVSS No. 126 (Electronic Stability Control), G&K states only that the Subject Vehicles “come with an Electronic Stability Control system that complies with this standard.” With respect to FMVSS No. 214 (Side Impact Protection), G&K acknowledges differences between the Subject Vehicles and Comparison Vehicles, but claims that “both [vehicles] meet the requirements of this standard.”

G&K’s petition further claims that the Subject Vehicles are capable of being readily altered to meet the following FMVSS, in the manner indicated: FMVSS No. 101, Controls and Displays - by programming of the speedometer for units of miles per hour; FMVSS No. 108, Lamps, Reflective Devices and Associated Equipment - by the replacement of headlamps and

front and rear side marker assemblies; FMVSS No. 110, Tire Selection and Rims - by the addition of tire information placard; FMVSS No. 111, Rear Mirrors - by the inscription of the required warning statement on the face of the passenger mirror; FMVSS No. 301, Fuel System Integrity - by the inspection and if necessary replacement of original fuel system components in the Subject Vehicles with components from the Comparison Vehicles; and FMVSS No. 401, Interior Trunk Release - by the addition of a trunk release. With respect to the fuel system integrity requirements of FMVSS No. 301, G&K's petition does not explain how it will determine what fuel system components need to be replaced or how it will determine, following the replacement of those unidentified components, whether the vehicles comply with the requirements of that standard.

G&K provides no data or technical analysis supporting any of its claims regarding the as-built compliance of the Subject Vehicles with the FMVSS it identified or their ability to be readily modified into compliance with any of the other FMVSS. Instead, it states that “[a]ll statements concerning compliance of the [Subject Vehicles] with applicable FMVSS, or modifications required to enable the [Subject Vehicles] to comply with applicable FMVSS, are the result of a detailed inspection and investigation of available literature comparing the [Subject Vehicles] with the [Comparison Vehicles].” No such literature was identified in or included with G&K's petition.

III. Public Comments: A Notice of Receipt of G&K's petition was published in the *Federal Register* for public comment for a period of 30 days. 84 FR 72133 (Dec. 30, 2019). No public comments were submitted in response to the Notice of Receipt.

IV. NHTSA's Analysis: NHTSA's review of information submitted by the Petitioner, publicly available information, data obtained from the manufacturer and images of the Subject Vehicle and Comparison Vehicle indicates that the Subject and Comparison Vehicles are not substantially similar. The Petitioner has not met its burden of demonstrating that the Subject Vehicles are eligible for import because they are substantially similar to, and of the same

model year, as vehicles originally manufactured for import into and certified for sale in the United States, and therefore capable of being readily altered to conform to all applicable FMVSS.

Although both the Comparison and Subject vehicles appear to share a common platform, the Comparison Vehicle offered by the petitioner is a traditional passenger car while the Subject Vehicle is a limousine. The Subject Vehicle has a partition between the driver and passenger compartments, forward and rear-facing seating in the rear passenger compartment, and a different engine and suspension system. The Subject Vehicles and Comparison vehicles differ in overall length and wheelbase by 41 inches, have a roof height difference of 4 inches and the Subject Vehicle is 1,700 pounds heavier than the Comparison Vehicle.

As part of its analysis, NHTSA sought input from the manufacturer of both the Subject Vehicles and the Comparison Vehicles. In response to the agency's question of whether the Subject Vehicles and Comparison vehicles were, or were not, substantially similar, the manufacturer responded by comparing the Subject Vehicle to the 2019 model year Maybach S650:

It is Mercedes-Benz's position that the S600 Pullman cannot be considered substantially similar to the Maybach S650, primarily because of mass (2820 kg vs 3600 kg), which translates to differences in crash tests, braking distance, and tire loads.⁴

While the response did not directly address the similarity or differences between the Subject Vehicle and Maybach S600, we note that that the difference in size and mass between the Subject and Comparison Vehicle is significant and the information provided by the manufacturer relating to crash test, braking and tire loading performance still apply.

NHTSA also finds that G&K's petition fails to establish that it involves a comparison of vehicles of the same model year. Although the petition states that G&K inspected a model

⁴ Introduced for model year 2019, the Mercedes-Benz Maybach S650 is a successor vehicle to the Mercedes-Benz Maybach S600. The dimensions of the Maybach S650, including length, wheel base, roof height, and weight are nearly identical to the Maybach S600, and the comments from the manufacturer therefore apply equally to any comparison between the Subject Vehicles and the Comparison Vehicles. A copy of the correspondence between NHTSA and Mercedes-Benz USA is included in the public docket. See Mercedes-Benz Pullman Response, Docket ID: NHTSA-2019-0117 (available at www.regulations.gov).

year 2018 Subject Vehicle, it does not identify the model year of any Comparison Vehicle with which it was compared. The petition also fails to include any reference to a comparison involving a model year 2017 or model year 2019 Subject Vehicle with any specific model year Comparison Vehicle.

NHTSA further finds that G&K's petition fails to establish that the Subject Vehicles are capable of being readily altered to conform to all applicable FMVSS. As previously noted, the petition relies heavily on assertions that the as-built Subject Vehicles conform with many of the applicable FMVSS because they utilize the same components as the certified Comparison Vehicles. These assertions are not persuasive because many of the standards at issue are vehicle standards (as opposed to equipment standards). The considerable differences in size and configuration between the Subject and Configuration vehicles is contrary to any assumption that components or design features found on the smaller vehicle will deliver acceptable performance on a larger one. The fact that one vehicle includes some common components with a different, compliant vehicle does not necessarily support the conclusion that the first vehicle is also compliant. With a longer wheelbase, greater mass, and different suspension, the crash test and other dynamics of the Subject Vehicles will necessarily be different than those of the Comparison Vehicles. As the manufacturer observed, the different mass of the two vehicles "translates to differences in crash tests, braking distance, and tire loads." The manufacturer also confirmed that "there is no documentation existing within MB-AG to indicate that the [Subject Vehicles] were tested for conformance to the FMVSS." See Mercedes-Benz Pullman Response, Docket ID: NHTSA-2019-0117 (available at www.regulations.gov).

Based on the differences between the Subject Vehicles and the Comparison Vehicles, NHTSA takes issue with some of the factual assertions in G&K's petition. For example, G&K states that the Subject Vehicle "comes equipped with a body/roof and support structure and components identical to those found in the [Comparison Vehicle] and therefore meets the

requirements of FMVSS 216” (Roof Crush Protection). Given the different dimensions (including length, wheel base, and roof height) of the two vehicles, the statement regarding identical body and roof components cannot be accurate. Likewise, given the difference in mass (1,700 pounds), there is no basis for assuming that the heavier Subject Vehicle complies in the same manner as the lighter Comparison Vehicle.

As noted above, G&K also fails to explain, with respect to the fuel system integrity requirements of FMVSS No. 301, how it could determine what components need to be replaced and whether those proposed components will ensure compliance with that standard. G&K also fails to acknowledge that the different configuration of the Subject Vehicles makes them subject to additional standards beyond those applicable to the Comparable Vehicles, including the FMVSS No. 118 requirements applicable to electronic partitions between the driver and passenger compartments.

V. NHTSA’s Decision: Petitioner has failed to demonstrate that the Subject Vehicles are substantially similar to the Comparison Vehicles, failed to demonstrate that its comparison involved vehicles of the same model year, and failed to demonstrate that the Subject Vehicles are capable of being readily altered to conform to all applicable FMVSS. In addition, based on available information, the Subject Vehicles do not meet the statutory requirements. The petition therefore is denied. Pursuant to 49 CFR 593.7(e), NHTSA will not consider a new petition covering the models that are the subject of this decision until at least 3 months from the date of this notice of denial.

(Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.)

Jeffrey Mark Giuseppe,

Associate Administrator for Enforcement.

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